

May 19, 2017

**VIA ELECTRONIC-FILING**

The Honorable Leonard P. Stark  
U.S. District Court for the District of Delaware  
J. Caleb Boggs Federal Building  
844 N. King Street  
Wilmington, DE 19801-3556

Re: *International Business Machines Corporation v. Groupon, Inc.*, C.A. No. 16-122-LPS

Dear Chief Judge Stark:

Pursuant to the October 4, 2016 Scheduling Order (D.I. 17), Plaintiff International Business Machines Corporation (“IBM”) and Defendant Groupon, Inc. (“Groupon”) submit the following report on the status of discovery and certain other issues in the above-captioned litigation.

1. Procedural Status

On March 2, 2016, IBM commenced this patent infringement action against Groupon, asserting U.S. Patent Nos. 5,796,967 (the “’967 patent”), 8,072,849 (the “’849 patent”), 5,961,601 (the “’601 patent”), and 7,631,346 (the “’346 patent”) (collectively, the “patents-in-suit”). (D.I. 1). On October 4, 2016, the Court entered a Scheduling Order. (D.I. 17). On December 13, 2016, Groupon moved for judgment on the pleadings that the ’967 and ’849 patents are invalid under 35 U.S.C. § 101.

Since the Court entered its Scheduling Order, the parties have been engaging in fact discovery, which closes September 8, 2017. In addition, the parties have exchanged and briefed disputed claim terms.

A *Markman* hearing and a hearing on Groupon’s motion for judgment on the pleadings is scheduled for June 5, 2017.

2. Related Case

On February 9, 2015, IBM filed a complaint in this Court against The Priceline Group Inc., priceline.com LLC, Kayak Software Corporation, and OpenTable, Inc. for infringement of the same four patents that IBM asserts against Groupon. *See IBM v. The Priceline Group, Inc.*, Civ. No. 15-137-LPS (“*Priceline Action*”). IBM has identical counsel in both suits. The parties are awaiting decisions on their summary judgment and *Daubert* motions in that case. A two-

week trial is scheduled to begin January 22, 2018.

### 3. IPR Petitions

Groupon has filed a petition for *inter partes* review challenging claims 1-3, 5, 8, 10, 12, and 13 of the '346 patent. IBM's preliminary response is due July 6, 2017. An institution decision is expected in early October 2017.

Separately, the defendants in the *Priceline* Action, filed a petition for *inter partes* review, challenging claims 1-20 of the '346 patent. See IPR Nos. 2016-00608 and 2016-00609. The Patent Trial and Appeal Board instituted review of claims 1, 3, 12, 13, 14, 15, and 18, a subset of the claims IBM has asserted in the litigations. Oral argument was held on April 27, 2017. A final decision is expected in early August 2017.

### 4. Status of Fact Discovery

The parties have exchanged multiple sets of discovery requests. Neither party has taken any depositions, but IBM recently served its first notice of deposition on Groupon. Both parties have made document productions, including ESI from non-custodial data sources, and continue to supplement their productions.

Groupon has agreed to further supplement its document productions and interrogatories responses by June 2, 2017, as set forth below:

- Groupon has agreed to investigate whether certain financial information requested by IBM is maintained by Groupon.
- Groupon has agreed to supplement Interrogatory No. 2 to identify the individuals who had knowledge of the patents-in-suit.
- Groupon has agreed to supplement Interrogatory No. 4 to provide information concerning revenue, costs, and profits, and agrees to identify to IBM the subset of the requested information that is unavailable or unduly burdensome to provide.
- Groupon has agreed to supplement Interrogatory No. 8 to identify Groupon's contentions regarding issues previously objected-to as untimely.
- Groupon has agreed to supplement its production of source code to include additional source code modules specifically identified by IBM in prior correspondence.
- Groupon has agreed to investigate and inform IBM whether it has been able to identify the source code requested by functionality by IBM in prior correspondence.
- Groupon has agreed to produce discoverable documents, subject to its objections, from its internal development wikis, Google Sites, JIRA, GitHub, and Pivotal Tracker.

To the extent either party has or intends to use search terms to collect ESI documents, that party agrees to provide those search terms in accordance with paragraph 5(b) of the Court's Default Standard for Discovery.

The parties were unable to reach agreement on other issues and are filing a discovery dispute letter, pursuant to which:

- IBM seeks to compel Groupon to produce internal financial and sales documents including those sufficient to identify Groupon's revenue, costs, and profit associated with any categories or channels of each of the accused instrumentalities that Groupon uses to track sales or transactions (such as Local, Travel, and Goods) and, within those categories or channels, sufficient to distinguish U.S. revenue, costs, and profit from other non-U.S. revenue, costs and profit, on a monthly basis from 2010 to the present.
- Groupon takes the position that Groupon has already produced information which shows revenue, costs and profits associated with the various channels of its business (such as Local, Travel, and Goods). Groupon has agreed to investigate whether the information regarding revenue, costs, and profit is kept in a way sufficient to break it down on a month-to-month basis and by U.S. data rather than North American data.

5. Amended Complaint

After IBM filed its original complaint, Groupon acquired LivingSocial, Inc. ("LivingSocial"). IBM seeks leave to amend the original complaint to add LivingSocial as a party. Groupon opposes IBM's request for leave to file an amended complaint to add LivingSocial as a party to this action. The parties will brief the issue pursuant to paragraph 9 of the Court's Scheduling Order.

Respectfully yours,

*/s/ Bindu A. Palapura*

Bindu Palapura

BAP/msb/5197077/43155

cc: Clerk of the Court (via hand delivery)  
Counsel of Record (via electronic mail)